

L. Beaman #1
June 7, 2010

No. S-097767
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF:

THE *CONSTITUTIONAL QUESTION ACT*, R.S.B.C. 1986, c. 68

AND IN THE MATTER OF:

THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

AND IN THE MATTER OF:

A REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL SET OUT IN
ORDER IN COUNCIL NO. 533 DATED OCTOBER 22, 2009 CONCERNING
THE CONSTITUTIONALITY OF S. 293 OF THE *CRIMINAL CODE OF CANADA*,
R.S.C. 1985, c. C-46

AFFIDAVIT #1 OF LORI BEAMAN

I, Lori Beaman, Professor of Religious Studies in the Department of Classics and Religious Studies at the University of Ottawa at 102-70 Laurier Avenue East, Ottawa, Ontario, K1N 6N5, MAKE OATH AND SAY AS FOLLOWS:

Introduction

1. I am a full professor in the Department of Classics and Religious Studies at the University of Ottawa. I hold a Canada Research Chair in the Contextualization of Religion in a Diverse Canada. My research focus for the past 12 years has been on religious minorities and religious freedom. I am also the director and principal investigator of a seven year, 36 member Major Collaborative Research Initiative funded by the Social Sciences and Humanities Research Council of Canada entitled "Religious Diversity and its Limits: Moving Beyond Tolerance and Accommodation".

2. I have been a professor at the University of Ottawa since June 2006, when I was invited by the University to take up the Research Chair. Prior to that, I was an associate professor in the Department of Sociology and Anthropology at Concordia University from 2002 to 2006. Previous to that, I was an assistant and associate professor in the Department of Sociology at the University of Lethbridge from 1998 to 2002.
3. I was born in Moncton, New Brunswick in 1963. I studied at the University of New Brunswick and have received a B.A. (1985), an LL.B. (1987), an M.A. (1992) and a Ph.D. (1996) from that university. I practiced law at Gerrish and Smith in Sussex, New Brunswick from 1987 to 1992.
4. As a professor of Religious Studies and a Canada Research Chair, I teach in the areas of religion and law, identity construction, and theory and methods in the social scientific study of religion. My research has focused on religious minorities and religious freedom and I have published in this area during almost the entirety of my academic career. A copy of my curriculum vitae is attached as **Exhibit "A"** to this Affidavit.
5. Part of my programme of research includes understanding polygamy as it is practiced in relation to religious expression.

Polygamy across religious traditions

6. Polygamy as it is usually discussed and understood is more accurately described as polygyny, or a relationship form in which a man has more than one wife. In this affidavit, I will refer to this practice by its broader and more popularly used term of 'polygamy'
7. Polygamy as a religious practice exists across a number of religious traditions. For some who practice it, polygamy is integrally linked to their religious beliefs. For example, among Fundamentalist Latter-day Saints, the practice of polygamy has implications for the afterlife, follows in the footsteps of Joseph Smith, their founding prophet, and provides opportunities for a demonstration of a godly life. For some

Muslims, polygamy fits within the Qur'an and thus links them to God and their religious tradition.¹ Some Yeminite Jews in Israel practice polygamy as an expression of their religious beliefs.² Some First Nations people historically practiced polygamy, which can be linked to their religions.³

8. Syncretic religion in Africa blends Christianity and the traditional practice of polygamy, such that some Christians in Africa are also practicing polygamists. The relationship of the practice to religion in Africa is less clear because dominant notions of religion, imported by Christian missionaries, have deemed particular sets of beliefs and practices to be non-religious or 'magic'. This was the case in Christian conversion of both colonial Canada and Africa.⁴
9. For some religious communities, the practice of polygamy is strictly controlled. For example, among Muslims, those who practice polygamy must limit the number of wives to four and be able to treat all wives well and equally. These restrictions are seen as ensuring that polygamy is practiced according to the teachings of the Qur'an.

¹ Amira Mashhour, "Islamic Law and Gender Equality - Could there be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt" (2005) 27(2) *Human Rights Quarterly* 562.

² Aharaon Gaimani. 2006. "Marriage and Divorce Customs in Yemen and Eretz Israel." *NASIM*. 11:43-83.

³ Sarah Carter, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915*, (Edmonton: University of Alberta Press, 2008); Sarah Carter, "Creating 'Semi-Widows' and 'Supernumerary Wives:' Prohibiting Polygamy in Prairie Canada's Aboriginal Communities to 1900," in Katie Pickles and Myra Rutherdale eds., *Contact Zones: Aboriginal and Settler Women in Canada's Colonial Past*. (Vancouver: University of British Columbia Press, 2005) 131; Irving Hallowell, "The Incidence, Character, and Decline of Polygyny among the Lake Winnipeg Cree and Saulteaux" (1938) 40(2) *American Anthropologist* 235; M Susan Walter, "Polygyny, Rank, and Resources in Northwest Coast Foraging Societies" (2006) 45(1) *Ethnology* 41.

⁴ Helen Ware, "Polygyny: Women's Views in a Transitional Society, Nigeria 1975," (1979) 41(1) *Journal of Marriage and the Family* 185; Peter G Forster and Godfry A Banda, "The Last Church of God and His Christ" (1999) 29(4) *Journal of Religion in Africa* 442; Natasha Erlank. "Gendering commonality: African Men and the 1883 Commission on Native Law and Custom" (2003) 29(4) *Journal of Southern African Studies* 937; Augustine Nwoye, "The Practice of Interventive Polygamy in Two Regions in Africa: Background, Theory and Techniques" (2007) 31 *Dialectical Anthropology* 383; HW Turner, "Monogamy, A Mark of the Church?" *International Review of Mission* 55(July):313-21; Sam Owusu 2007. "Towards a Theology of Marriage and Polygamy." *Direction*. 36(2):192-205.

10. For those who practice polygamy for religious reasons, polygamy can:
- a. bring one closer to or foster a connection with one's god;
 - b. model the lives of important religious figures or prophets;
 - c. signal the degree of one's commitment to one's faith; and/or
 - d. have a direct impact on the nature of one's afterlife.
11. The extent to which polygamy is practiced both within the religious context and outside of it is difficult to determine for a variety of reasons, including:
- a. Criminalization drives its expression underground;
 - b. Many communities who practice polygamy are already vulnerable communities (such as aboriginals, immigrants, and religious minorities in general); and
 - c. Family arrangements, whatever they may be, are sometimes considered to be private.
12. These factors impact on the extent to which it is possible to conduct social scientific research on polygamy.
13. In Canada and the United States, there is limited credible social scientific research that documents the extent or nature of the practice of polygamy either as a religious practice or as a lifestyle choice.⁵ Such scholarship is critical to understanding the nature of polygamous relationships

⁵Irwin Altman and Joseph Ginat, *Polygamous Families in Contemporary Society* (New York: Cambridge University Press, 1996); Janet Bennion, *Desert Patriarchy: Gender Dynamics in the Chihuahua Valley* (Tucson: University of Arizona Press, 2004); Janet Bennion, *Women of Principle: Female Networking in Contemporary Mormon Polygyny* (Oxford: Oxford University Press, 1998); Angela Campbell, "Bountiful Voices" (2009) 47 *Osgoode Hall Law Journal* 183; Angela Campbell, "Wives' Tales: Reflecting on Research in Bountiful" (2008) 23(1,2) *Canadian Journal of Law and Society* 121.

Religion as Subjective or Lived

14. One of the key understandings of the social scientific study of religion is that religion is lived. By this, it is meant that religion is not simply a set of orthodoxies that are written on paper against which practice or belief can be measured. Religion as lived recognizes the very real ways in which people of faith integrate belief and practice in their daily lives.⁶
15. Understanding religion as lived involves the recognition of the subjective understanding by the believer-practitioner of religion. It involves the personal beliefs of the individual and his or her self-definition, as well as his or her understanding of how the world – and in some cases, the afterlife – work.
16. Religion as lived – or a subjective understanding of religion – requires a careful examination of the beliefs and practices of individual believers or groups of believers in assessing whether a particular practice or belief is religious.
17. Key to this is the recognition that the entirety of a religious group need not engage in a particular practice, or hold a particular belief, in order for the practice or belief to be religious for some members of the group.
18. Put another way, all religious groups are diverse and contain internal differences and sometimes divisions. Moreover, religion is local, lived and dynamic. Thus theological or academic debates that purport to demonstrate the 'real' interpretation of particular texts are often irrelevant to individual and group understandings of their beliefs and practices as religious.
19. The implication of the notion of lived religion is that careful consideration must be given to minority religious beliefs and practices. Thus, for example, while there is

⁶ David Hall, *Lived Religion in America: Towards a History of Practice* (Princeton: Princeton University Press, 1997); Meredith McGuire, *Lived Religion: Faith and Practice in Everyday Life* (New York: Oxford University Press, 2009); Robert A. Orsi, *Between Heaven and Earth: The Religious Worlds People Make and the Scholars Who Study Them* (Princeton: Princeton University Press, 2005); Robert Orsi "Is the Study of Lived Religion Irrelevant to the World We Live In? (2003) 42(2) Journal for the Scientific Study of Religion 169.

variability amongst the percentage of those who practice polygamy across religions, some organize their family lives this way as a religious practice based on a sincerely or truly held religious belief.

20. The fact that not all or even most people in a particular tradition engage in a particular practice does not diminish its importance as an important part of the faith commitment of those who do.

21. For some people, the criminalization of polygamy means that they cannot openly express their religious beliefs and practice polygamy without fear of criminal sanction or reprisal.⁷

22. Criminalization of polygamy may result in the impediment of the free expression of religious identities and values which are, for some, based in a comprehensive system of faith and practice associated with a set of beliefs that is fundamental to who they and their communities are.

SWORN BEFORE ME at Lordsburg
New Brunswick, this 7 day of June
June, 2010.
Katherine Landry
A Commissioner for taking Affidavits
for New Brunswick.

Lori G Beaman
Lori Beaman

Katherine Landry
Commissioner of Oaths
My Commission Expires Dec. 31, 2013
Katherine Landry
Lordsburg
N.B.

⁷ Irwin Altman and Joseph Ginat, *Polygamous Families in Contemporary Society* (New York: Cambridge University Press, 1996); Janet Bennion, *Desert Patriarchy: Gender Dynamics in the Chihuahua Valley* (Tucson: University of Arizona Press, 2004); Janet Bennion, *Women of Principle: Female Networking in Contemporary Mormon Polygyny* (Oxford: Oxford University Press, 1998); Martha Sonntag Bradley, *Kidnapped from that Land: The Government Raids on the Short Creek Polygamists* (Salt Lake City, University of Utah Press, 1993); Martha Sonntag Bradley, *4 Zinas: A Story of Mothers and Daughters on the Mormon Frontier* (Salt Lake City: Signature Books, 2000).

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